



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 14, 2023

IN THE MATTER OF:

Appeal Board No. 628986

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination, holding the claimant eligible to receive benefits, effective October 10, 2022. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by and on behalf of the employer. The claimant appeared at hearing but did not participate because she was working at the time of the hearing. By decision filed April 5, 2023 (A.L.J. Case No.), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a further hearing. The record was not sufficiently developed regarding the claimant's eligibility and the employer's objection as to misconduct. The parties should have another opportunity to submit additional testimony and other evidence on this issue.

At the further hearing, the parties will appear and offer additional testimony and evidence as to the claimant's training, the type and duration of the training, training manuals, supervisory coaching, and the incidents which

precipitated the final written warning and ultimately, the discharge. Any documentary evidence relevant to such testimony, including but not limited to the employer's "Brink Personnel Handbook, GSR", as well as the "Standards of Excellence" shall be produced at hearing for entrance into evidence after an opportunity for objection.

The Administrative Law Judge will take all additional testimony and evidence necessary to complete the record, including an assessment of whether the claimant's conduct constitutes poor performance or rises to the level of gross negligence.

Now, based on the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the initial determination of eligibility and the employer's objection of misconduct, upon due notice to all parties and their representatives; and it is further

ORDERED, that the claimant and the employer shall contact the hearing section upon receipt of this decision, to notify the hearing section of potential dates of unavailability within the next forty-five (45) days;

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER